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LORD COKE AND PINNEL'S CASE. — In your note upon Accord and Satisfaction, on page 193 of the current volume of the REVIEW, you suggest that, while a payment of a part of what is due cannot be a satisfaction of the entire debt, such partial payment may, nevertheless, be effectual as a consideration to support a promise by the creditor not to collect the residue; and that in accordance with this distinction the case of *Foakes* v. *Beer*, 9 App. Cas. 605, might have been decided the other way, without any impeachment of Coke's familiar *dictum* in *Pinnel's Case*. This distinction, so far as I have observed, has not been taken by any writer upon Contracts. But the legal acumen of the writer of your "Note" will be appreciated, when I add that this distinction was explicitly stated nearly three centuries ago, and by no less distinguished an authority than Lord Coke himself.

His words, as reported in *Bagge* v. *Slade*, 3 Bulst. 162, are as follows: "And if a man be bound to another by a bill in £1000 and he pays unto him £500 in discharge of this bill, the which he accepts of accordingly, and doth upon this assume and promise to deliver up unto him the said bill of £1000, this £500 is no satisfaction of the £1000, but yet this is good and sufficient to make a good promise and upon a good consideration, because he hath paid money, *sc.* £500 and he hath no remedy for this again." The same case is found in 1 Roll. R. 354, where Coke is reported as saying: "Although this is not any satisfaction of the debt, still it is sufficient to ground an action on the case upon."

The meaning of this *dictum* is unmistakable. The creditor, notwithstanding the receipt of the £500, might still sue upon the bill and recover the other £500. But, if he should do so, he would have to refund the £500 as damages for breaking his contract to give up the bill. This cross action was the only mode by which, in Coke's time, the debtor could make use of the creditor's promise. To-day, of course, to prevent circuity of action, the debtor might plead the promise, if valid, as an

equitable plea. The validity of such a promise was denied in *Foakes* v. *Beer;* and it is one of the ironies of fate that the House of Lords unwittingly overruled the real opinion of Coke in *Bagge* v. *Slade* almost solely because they were not prepared to overrule his supposed opinion in *Pinnel's Case.*

Bagge v. *Slade* is also interesting on account of the point actually decided. The plaintiff and defendant were liable as co-sureties to A. In consideration that the plaintiff would pay A the entire debt, the defendant promised the plaintiff to reimburse him as to a moiety. The plaintiff paid the whole amount, but the defendant declined to keep his promise. To understand this case it must be remembered that the doctrine of contribution between co-sureties was not yet established, the Court of Common Pleas saying, when granting a prohibition against a bill for contribution in the Court of Requests in 1613, "If one surety should have contribution against the other, it would be a great cause of suit." It was necessary, therefore, to prove a valid express contract for reimbursement. The court in *Bagge* v. *Slade* sustained the contract, thus setting an early precedent for the modern cases. *Shadwell* v. *Shadwell,* 30 L. J. C. P. 145; *Scotson* v. *Pegg,* 6 H. & N. 295, and *Chichester* v. *Cobb,* 14 L. T. Rep. 433.

We have, therefore, this curious result of the English decisions. If a creditor promises a debtor something in consideration of the debtor's payment of his debt, the promise is not enforceable, because the debtor's performance of his legal duty is no consideration, not being a legal detriment. If, however, a third person promises the debtor something in consideration of the debtor's payment of his debt, the promise is valid, because the debtor's performance of his legal duty is a consideration, although not a legal detriment. It is a satisfaction to know that Lord Coke is in no way responsible for this antinomy. But it is unfortunate that *Bagge* v. *Slade* was not called to the attention of the House of Lords in the case of *Foakes* v. *Beer;* for in view of the declared reluctance of all the judges in that case to pronounce the creditor's promise invalid, it is possible, if not probable, that a knowledge of Lord Coke's real opinion might have led them to an opposite conclusion. JAMES BARR AMES.

"TRUSTS" WITHOUT BENEFICIARIES. — An erroneous decision in a court of law, unlike mistakes made in most professions or trades, never is at rest. The mischief is done not once and for all, but spreads like a contagious disease, affecting new matter and influencing the decision of other cases far removed in time and place from its origin. Especially is this true when such a decision is made by a judge whose opinions are entitled to the greatest respect. When Lord Eldon in the case of *Morice* v. *The Bishop of Durham,* 10 Ves. 521, held that a gift on trust for benevolent purposes was void because there was no *cestui* to enforce the trust, he could hardly have imagined what was to be the far-reaching and lamentable effect of the decision, and the tax it was to put on the ingenuity of judges and lawyers to prevent the extension of its principle. That case is securely established as law both in England and America; too securely, perhaps, to be done away with except by legislative aid. But its *ratio decidendi* has been discredited by the decisions of courts of both countries in cases differing in no wise from it in principle. Gifts on trust for example, for the purpose of erecting a tombstone, for maintain-